Office of the Procurement Ombudsman | Bureau de l'ombudsman de l'approvisionnement

Canada

2017—2018

ANNUAL REPORT

OFFICE OF THE PROCUREMENT OMBUDSMAN

Promoting Fairness, Openness & Transparency in Federal Procurement

OFFICE OF THE PROCUREMENT OMBUDSMAN

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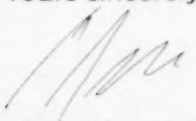
THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT

Dear Minister,

Pursuant to paragraph 22.3(1) of the *Department of Public Works and Government Services Act*, it is an honour to submit the Procurement Ombudsman Annual Report for the period starting on April 1, 2017, and ending on March 31, 2018 (fiscal year 2017–2018).

Yours sincerely,



Alexander Jeglic
Procurement Ombudsman
Ottawa, July 2018

Our Mission

To promote fairness, openness and transparency in federal procurement.

Fairness
Providing equal treatment to all current and potential suppliers.

Openness
Providing all potential suppliers with the opportunity to submit bids for government contracts.

Transparency
Providing information to Canadians in a timely manner that facilitates public scrutiny of decisions made and actions taken.

Our Mandate

The *Department of Public Works and Government Services Act* provides the authority for the Procurement Ombudsman to exercise his mandate as follows:

- Review the practices of departments for acquiring goods and services to assess their fairness, openness and transparency and make recommendations to improve those practices;
- Review complaints with respect to the award of a contract for the acquisition of goods below $25,300 and services below $101,100;
- Review complaints with respect to the administration of a contract, regardless of dollar value; and
- Ensure that an alternative dispute resolution (ADR) process is provided, if requested and agreed to by the parties to a federal contract.

Our Values

Employees of the Office of the Procurement Ombudsman are guided by the values of impartiality, transparency, professionalism and respect.

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Message from the Procurement Ombudsman

It is an honour to submit my first Annual Report as Procurement Ombudsman. This is the 10th annual report that the Office of the Procurement Ombudsman (OPO) has submitted to Parliament since opening its doors in May 2008.

As OPO celebrates its 10th anniversary, I would like to acknowledge the service and dedication of the staff and the Procurement Ombudsmen who came before me, starting with Shahid Minto, followed by Frank Brunetta and, most recently, Lorenzo Ieraci. They have all been instrumental in providing leadership and in advancing our mission to promote fairness, openness and transparency in federal procurement.

In reflecting on OPO's decade of existence, there are many achievements to celebrate. OPO responded to over 4,000 contacts, has completed 39 reviews of complaint, 19 procurement practice reviews of 30 federal organizations, and helped resolve disputes between federal officials and suppliers in 31 cases.

That is a record to be proud of. I look forward to building on our past success by focussing on the following four priorities over the course of my mandate.

2008
OPO's doors open
2008 2009
First completed procurement practice review
2009 2010
First completed review of complaint on the award of a contract and first completed ADR process
2013 2014
Creation of the online "Share Your Thoughts" portal
2013 2014
Initiation of OPO outreach program for Canadian suppliers
2015 2016
First time OPO's ADR services were requested by a federal organization
2015 2016
First review of complaint on the administration of a contract

Transparency

OPO will continue to focus on the core activities of my legislative mandate in a way that benefits the largest number of Canadians. More specifically, I would like to make more information available from our supplier complaint reports. By being more transparent with this information, we can actively engage with interested parties by sharing best practices and lessons learned in a way that is helpful to all parties. As an impartial Ombudsman, it is very important that OPO sets a positive example for governmental officials in terms of transparency.

Simplification

The simplification of the procurement process is an ongoing issue that has been raised to OPO for many years. OPO often hears that federal procurement is too complicated, time consuming and bureaucratic. I am committed to taking every opportunity to simplify all information and tools produced by OPO to make sure they are as direct as possible. I will simultaneously use my role as Procurement Ombudsman to get involved with procurement-related initiatives across government and continue to press for changes that reflect the feedback we have received from both suppliers and federal officials.

Growth in dispute resolution services

When Canadian businesses and federal organizations are embroiled in lengthy contractual disputes, nobody benefits, least of all the taxpayer. OPO provides alternative dispute resolution (ADR) services that are neutral, expedient and low cost. OPO ADR services include access to in-house, certified mediators with a background in procurement and contracting. Our mediators guide the parties through the ADR process and look for opportunities to bring the parties together to resolve the dispute. These dispute resolution services remain underutilized for a variety of reasons, and I am keen to see this change. One of the issues that prevents OPO involvement is the timing of consent to participate in this voluntary process. Currently, consent is mainly sought after the dispute has already arisen when the parties are less likely to agree on anything. One of the easiest ways to avoid this problem is by obtaining consent through specific language in the contract between the parties which lays out OPO's ADR role in any potential dispute. This language does not currently appear in as many federal contracts as OPO would hope. Encouraging adoption by federal organizations will be a point of emphasis moving forward. OPO has a very successful, albeit limited, track record offering ADR services. During my mandate, I intend on strongly promoting these ADR services to ensure they are utilized to the greatest extent possible to the benefit of all parties and ultimately the taxpayer.

Knowledge deepening and sharing

Lastly, I would like to expand OPO's procurement knowledge and expertise by performing deeper and more comprehensive analyses on procurement-related issues. The primary basis for these deeper dives will be the top issues that we see on a recurring basis. By creating one or two knowledge products each year, OPO hopes to educate the procurement community by examining the root causes of these recurring issues and providing meaningful solutions. We will be sharing our findings as broadly as possible to make sure the benefits are viewed by the intended audiences.

To accomplish these four priorities, I am committed to work with suppliers and federal officials alike to ensure that OPO's activities reflect their needs. For small and medium enterprises, in particular, we will continue to listen and collect information to ensure we understand their unique challenges. At the same time, we will seek opportunities to hear from procurement specialists and program managers across the country by participating in procurement-related conferences, engaging in one-on-one conversations and meeting with decision-makers.

As I begin my first year as the Procurement Ombudsman, I look forward to engaging with Canadian businesses and federal government officials to resolve issues and promote fairness, openness and transparency in the federal procurement process.

Alexander Jeglic

Top 5 procurement-related issues

1 • Solicitation

2 • Evaluation of bid

3 • Evaluation and selection plan

4 • Debriefing

5 • Planning and strategy

(For more information, see page 35)

Profile of contacts

"Your experience and depth of knowledge shined through, and it was a pleasure sharing some background and learning about procurement within the Government of Canada."

– Canadian supplier

411 Total contacts
264 Procurement-related
147 Not procurement-related
EDUCATE
FACILITATE
INVESTIGATE
88 General inquiries
22 Doing business with the federal government
20 OPO mandate & services
46 Procurement rules & process
141 Contract inquiries
117 Contract award
24 Contract administration
9 ADR requests
4 Resolved through OPO's help
2 Organizations declined
1 Withdrawn
2 Ongoing
*1 ADR request launched in 2016–2017 was completed in 2017–2018
26 Written complaints
24 Contract award
2 Contract administration
22 Complaints did not meet regulatory criteria
12 Award
10 Withdrawn
4 Complaints met regulatory criteria
4 Award
2 Reviews completed
2 Reviews carried over to 2018–2019
*6 Additional reviews launched in 2016–2017 were completed in 2017–2018

In this Annual Report, the term "contacts" refers to instances where individuals contacted OPO directly. These contacts commonly come from a variety of stakeholders who have a role in the federal procurement environment. There are two main stakeholder groups:

- suppliers selling, or hoping to sell, goods or services to federal organizations; and
- federal officials involved in buying those goods and services on behalf of the Canadian government (i.e. procurement officers, program managers and senior management).

In 2017–2018, OPO had a total of 411 contacts. Of those, 264 (64%) were procurement-related, ranging from general questions about how to do business with the federal government to specific inquiries regarding a particular contract or the rules governing federal procurement.

The remaining contacts, 147 (36%), were not procurement-related and could be categorized as follows:

- general inquiries from the public;
- individuals seeking assistance in reaching a specific government organization; or
- Canadians experiencing difficulty with a government program not related to procurement.

Whether the issue was procurement-related or not, OPO worked diligently to provide useful information and direct individuals to an appropriate source that could address their issue.

Promoting fairness, openness and transparency

OPO uses a three-pillar approach to promoting fairness, openness and transparency in federal procurement: Educate, Facilitate and Investigate. These pillars provide the foundation for understanding OPO's services to Canadian businesses and federal organizations and how it handled the 264 procurement-related contacts in 2017—2018.

Raise awareness of procurement issues and exchange information

De-escalate disputes and help resolve issues

Examine and review procurement issues

Educate

> “ Please extend my gratitude and excitement about today’s town hall meeting in Calgary to the two presenters. I learned a ton... ”
>
> **– Canadian supplier**

OFFICE OF THE PROCUREMENT OMBUDSMAN
BUREAU DE L'OMBUDSMAN DE L'APPROVISIONNEMEN
Have an issue with a federal contract?
We're here to help!
Problème de contrat avec le fédéral?
Nous sommes là pour vous aider!
OPO-BOA.GC.CA

411 Total contacts

264
Procurement-related

EDUCATE

88
General inquiries

22 Doing business with the federal government
20 OPO mandate & services
46 Procurement rules & process

Under the Educate pillar, OPO informs stakeholders about its mandate and services, as well as procurement rules and best practices. It also listens to and learns from Canadian businesses and federal organizations about the challenges they face with regard to procurement. In doing so, the Educate pillar acts like a "two-way street," whereby OPO and its various stakeholders all benefit from the sharing of information.

Responding to inquiries

Many suppliers have contacted OPO looking for information. Suppliers seek to better understand the procurement process and its various tools, or to raise concerns about doing business with the federal government. In all cases, OPO sought to provide meaningful information in a timely manner. Of the 264 procurement-related contacts in 2017–2018, 88 (33%) contacts were addressed by responding to inquiries. For example:

- *A supplier called OPO on how to do business with the federal government. OPO referred the supplier to the Office of Small and Medium Enterprises, an office within Public Services and Procurement Canada that provides information to small and medium businesses interested in competing for federal contracts.*
- *OPO responded to a supplier who requested more information about the dollar thresholds associated with OPO's services.*
- *OPO helped a supplier who was looking for information regarding Public Services and Procurement Canada's Intellectual Property clause in the Standard Acquisitions Clauses and Conditions Manual.*

The remaining 176 procurement-related contacts were addressed through the Facilitate and Investigate pillars and are described in subsequent sections of this report.

Raising awareness and sharing information

OPO has a mandate to provide services to Canadian suppliers and federal organizations across the country. OPO proactively reached out to suppliers by hosting 15 town hall meetings in 11 cities in five provinces. OPO also hosted eight virtual town halls where suppliers from other regions connected online and exchanged information. By offering this alternative format, OPO was able to provide suppliers who were unable to attend town hall meetings in person with access to valuable procurement-related information.

OPO also organized 16 information-sharing sessions with procurement officers from federal organizations both in the regions as well as in the National Capital Region. These sessions resulted in the sharing of procurement-related information, best practices and a better understanding of issues often encountered by federal officials in the procurement process. These meetings also provided the opportunity to explain the purpose and process of OPO's reviews, as well as discuss the benefits of its highly successful, but underused, ADR services.

Finally, OPO participated in 21 trade shows and procurement-related conferences. The Procurement Ombudsman also met with Parliamentarians to provide information, obtain feedback and encourage referrals from constituents that are experiencing issues with federal contracting.

EDUCATE AT A GLANCE

104,120

Number of Twitter impressions

592

Number of suppliers registered at 23 OPO town halls

16

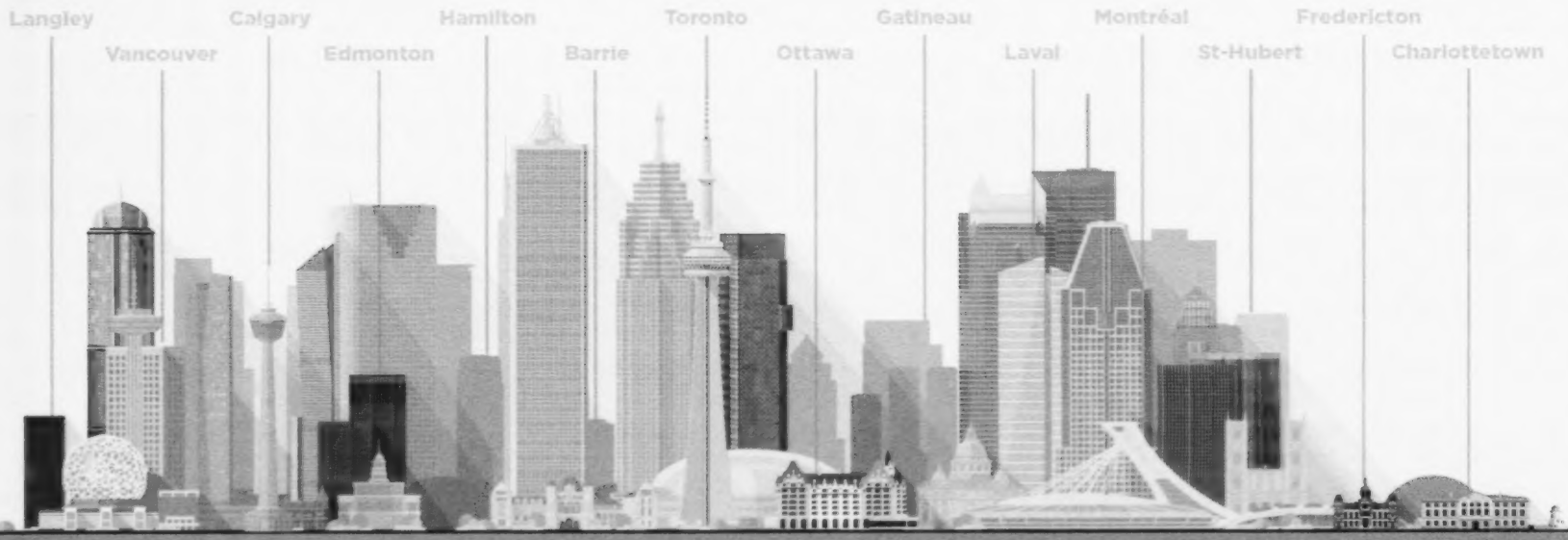
Number of information-sharing sessions with federal organizations

15

Number of kiosks at trade shows and expositions

69,603

Number of page views on OPO website



Listening to stakeholders

The following are examples of what OPO heard from suppliers and federal officials during outreach events in 2017—2018:

Issues raised by both suppliers and federal officials

	Title	Issue
1	**Keep it simple**	The federal government needs to simplify its procurement processes. There are too many overlapping procurement rules, regulations, policies and trade agreements, which results in excessive time and effort to respond to a solicitation.
2	**Problematic procurement tools**	Procurement tools, such as standing offers and supply arrangements, can sometimes be cumbersome to use and difficult to qualify for. These tools also seem to disproportionally favour suppliers located in the National Capital Region.
3	**Security clearances**	Obtaining security clearance is a constant frustration. Examples include the inability to transfer clearances between departments and the length of time it takes to get one.

Issues raised by suppliers

	Title	Issue
1	**"Don't bite the hand that feeds you"**	Suppliers are hesitant to raise their procurement-related concerns to federal organizations and oversight entities out of fear of being blacklisted from future contracting opportunities.
2	**Can't compete**	Small businesses raised issues about national requirements and contract bundling. While having the potential to increase efficiencies and save the Crown money, they make it extremely difficult for small businesses to compete as a prime contractor.
3	**Difficulty with innovation**	Suppliers noted that it is difficult to sell innovative products to the federal government as criteria are often too stringent, or it is too difficult to educate federal officials about their innovative product.
4	**Rigged solicitations**	Suppliers alleged that specifications in Statements of Work seemed tailored for specific suppliers or are "rigged" to eliminate competition.
5	**Not worth the costs**	Small businesses reported that it is often "not worth it" to do business with the federal government due to the high costs of submitting bids in relation to the overall dollar value of the contract.
6	**Suppliers underbidding**	Suppliers expressed frustration regarding competitors that purposely underbid to win contracts, only to raise prices afterwards through an amendment.
7	**Neglecting subcontractors**	Subcontractors shared their frustration about how there is no one to turn to when they run into contract issues.

Issues raised by federal officials

	Title	Issue
1	**Competing objectives**	Procurement officers often get pushback from program managers, who see the procurement process as an obstacle that is preventing them from doing their job.
2	**Sole-source threshold too low**	Federal organizations are allowed to direct a contract to a supplier for contracts of less than $25,000 – an amount that has not increased since it was established in the 1980s, despite the loss of purchasing power over the years.
3	**Standardization not optimal**	Federal officials have made some positive comments on the evolution of procurement tools, but generally speaking, the tools have not found the perfect balance between standardization and effectiveness.
4	**Not a community yet**	Procurement officers have stated that the procurement community needs to be strengthened. Resource capacity is running low, training/certification is difficult to acquire or ineffective and expectations regarding procurement officers is inconsistent across federal organizations.
5	**Procurement training for everyone**	Procurement officers voiced their opinion that more procurement training should be required for any public servant, regardless of role, who deals with any form of contracting.
6	**Poor project planning**	Procurement officers stated that a challenge they face is when they are confronted with requests that require unnecessarily short turnaround times.
7	**Frustrations over furniture**	Procurement officers have specifically pointed out how supply arrangements for the purchase of furniture can be particularly complicated and cumbersome to use.

In conclusion, OPO's outreach activities serve multiple purposes, including:

- enabling OPO to learn about the procurement-related issues faced by both suppliers and federal officials;
- providing OPO with practical information to share with senior federal decision-makers; and
- allowing OPO representatives to raise awareness of its mandate and services, including how it successfully facilitates the resolution of contract disputes.

Facilitate

“ This was such an amazing experience. [OPO staff] was exceptionally helpful. We are back on track with the contract. ”

– Canadian supplier

411 Total contacts

264
Procurement-related

FACILITATE

141
Contract inquiries

- **117** Contract award
- **24** Contract administration

9
ADR requests

- **4** Resolved through GPO's help
- **2** Organizations declined
- **1** Withdrawn
- **2** Ongoing

*1 ADR request launched in 2016–2017 was completed in 2017–2018

Helping resolve issues

Suppliers contacting OPO with a procurement-related issue are initially encouraged to provide the federal organization in question with an opportunity to respond and address their issue. In many cases, direct communication between the supplier and the federal organization is the most efficient way to resolve the issue.

In situations where suppliers have been unsuccessful in their communication attempts or dissatisfied with their interactions with the organization, OPO can assist by playing a "go-between" role. This involves obtaining an understanding of the supplier's issues and contacting the federal organization to discuss them. Once OPO has obtained the organization's perspective, the information is relayed back to the supplier. This process is repeated as many times as necessary and, in many cases, results in a facilitated resolution. In addition, OPO is often able to re-establish communication between the supplier and the federal organization, allowing the parties to resolve their issues directly.

Of the 264 procurement-related contacts, 141 resulted in facilitated communications between the supplier and the federal organization. Examples where OPO helped informally facilitate a resolution include:

- **Helping a supplier get paid for completed work**

  A supplier contacted OPO after not receiving payment for work completed six months prior. OPO contacted the federal organization and facilitated payment to the supplier. The supplier was very appreciative, and stated "...I express my deep gratitude for all that you did to bring this to a resolution. Your tenacity and professionalism are to be commended and admired."

- **Helping a supplier receive an overdue interest payment**

  A supplier contacted OPO because of unpaid interest that was due following services that were provided more than a year earlier. After working closely with the supplier and the federal organization, and upon reviewing the initial contract, this oversight was rectified, and the federal organization paid the supplier.

FACILITATE AT A GLANCE

Whether it be a
supplier or a **federal official** with
a procurement-related inquiry or complaint,
OPO provides **several methods** by which **to be contacted**.

By telephone

Toll-free:
1-866-734-5169

Toll-free for hearing-impaired:
1-800-926-9105

By email

ombudsman@boa-opo.gc.ca

By "Share Your Thoughts" web portal

http://opo-boa.gc.ca/opinion-thoughts-eng.html

By mail or in person

Office of the Procurement Ombudsman
Constitution Square
340 Albert St., 11th floor
Ottawa ON K1R 7Y6

By fax

613-947-6211

It has become apparent that playing this "go-between" role is critical as OPO is an impartial party to the dispute. Consequently, it plays an important role in helping resolve procurement-related issues before they escalate. OPO's interest is to help resolve issues as quickly and informally as possible. When issues cannot be resolved informally, OPO may offer ADR. In these instances, OPO brings the parties to the table voluntarily to find a path to resolution.

Providing alternative dispute resolution services

Of OPO's 264 procurement-related contacts in 2017—2018, nine were written requests for ADR services.

OPO's low cost ADR services offer an opportunity for disputing parties to come together in a neutral setting to participate in a confidential and constructive dialogue.

OPO's certified mediators guide the participants through the process and encourage participants to reach a mutually agreeable resolution to the dispute. All parties to the contract must consent to participate in OPO's ADR services. One of the easiest ways to obtain consent is through specific language in the contract between the parties which lays out OPO's role in ADR. This language does not appear in as many contracts as OPO would like, but encouraging adoption by federal organizations will be a point of emphasis moving forward.

OPO's mediators have a very successful track record mediating disputes and helping the parties re-establish their business relationships. OPO's ADR services are attractive for parties to federal government contracts for several reasons:

- **Low cost:** the costs for the mediators and facilities are covered by OPO. Other costs, such as travel, are incurred by participating parties.
- **Expedient**: mediators facilitate direct communications, handle the logistics of the ADR session, assist in clarifying the issues and provide practical solutions.
- **Experts:** mediators are OPO employees with a certification in mediation and a background in procurement.
- **Neutral:** mediators are not paid or retained by the parties and have no incentives to favour either side.

Of the nine ADR requests received in 2017—2018:

- Four requests were resolved through OPO assistance before the formal ADR process was initiated:

  1 A supplier submitted an ADR request regarding a late payment and a dispute over interest owed. Acting as an intermediary between the supplier and the federal organization, OPO successfully assisted the supplier in receiving the interest owed without the need for a formal ADR process.

  2 A supplier submitted an ADR request following the termination of a contract the day after it was awarded. The supplier disagreed with the organization's justification for the termination. With the supplier's permission, OPO informed the federal organization and outlined the supplier's issue. The federal organization then contacted the supplier directly to provide a more detailed explanation. The supplier withdrew its ADR request soon after.

  3 A supplier submitted an ADR request following the receipt of a stop work order due to performance issues. In getting the supplier and the federal organization to communicate, both parties came to an agreement to amend the contract to resolve the dispute.

  4 A supplier submitted an ADR request following delays in the issuance of an interim certificate of completion for a construction contract. This certificate was required for the release of the supplier's security deposit and final payment. The contracting department was unwilling to issue this certificate, stating there were various deficiencies in the work completed. By playing a go-between role between parties, OPO was able to informally facilitate a mutual resolution without escalation to a formal ADR process.

- One request for ADR services was withdrawn as the supplier was able to coordinate a meeting with the federal organization prior to the start of the formal mediation process.
- Two requests resulted in federal organizations declining to participate in OPO's ADR services. As OPO's ADR services require all parties to a federal contract to voluntarily participate, these requests could not proceed.
- Two requests for ADR services were received late in 2017—2018 and will be reported in next year's Annual Report.

As a neutral mediator, OPO successfully helps suppliers and federal officials re-establish lines of communication and resolve their issues informally, saving the parties time and avoiding costly litigation.

Update from the previous Annual Report

A request submitted in 2016—2017 resulted in an OPO-led ADR process being successfully completed in 2017—2018.

OPO received a request from a supplier involved in a dispute with a federal organization regarding a contract for robotics. The dispute revolved around the federal organization withholding a payment for the final deliverable. The organization felt the deliverable did not meet the requirements of the contract, whereas the supplier believed the deliverable complied with all terms and conditions.

The supplier advised OPO that the contract had expired a number of years prior, and efforts to resolve the dispute had been unsuccessful. OPO contacted the federal organization, which agreed to participate in the ADR process. After two face-to-face mediation sessions and subsequent back-and-forth between the parties, OPO was successful in helping the parties resolve their issues and sign an agreement to settle the dispute.

The key lessons learned from this case were:

- Federal organizations need to ensure that the terminology used in contracts—such as what constitutes an "acceptable" deliverable—is clearly set out in writing and is not open to interpretation; and
- Suppliers need to seek clarification regarding ambiguous terminology prior to entering into contracts with federal organizations.

Moreover, when problems arise during the execution of a contract, suppliers and federal officials should seek to solve them immediately, first through direct communication and if unsuccessful, then by contacting OPO.

Investigate

"I would like to express my appreciation for the thoroughness and effort demonstrated by the OPO..."

– Canadian supplier

411 Total contacts

264
Procurement-related

INVESTIGATE

26
Written complaints

24 Contract award
2 Contract administration

22
Complaints did not meet regulatory criteria

12 Award
10 Withdrawn

4
Complaints met regulatory criteria

4 Award

2 Reviews completed
2 Reviews carried over to 2018–2019

*6 Additional reviews launched in 2016–2017 were completed in 2017–2018.

Reviewing supplier complaints

While OPO is often effective in facilitating the resolution of issues between suppliers and federal organizations, it is occasionally made aware of specific contract-related issues that could not be resolved informally, or systemic issues in federal procurement. In circumstances where questions of fairness, openness and transparency remain, OPO relies on the Investigate pillar.

Suppliers with concerns about the award or administration of a federal contract can file a written complaint with OPO. Once a written complaint is received, the Procurement Ombudsman must make a determination on whether to undertake the review within 10 working days.

In making this determination, the Ombudsman is required to assess whether the complaint meets the requirements set out in the *Procurement Ombudsman Regulations* (the Regulations). If a complaint meets the regulatory criteria (see Table 1), the Ombudsman must launch a review and produce a report. These reports include findings and, if applicable, recommendations for improving the procurement process.

Review of complaint flow chart

1
A written complaint is received.
2
OPO assesses the written complaint and determines whether a review must be launched within 10 working days.
3
OPO notifies the supplier and the federal organization of the determination.
4
If a review is to be launched, OPO receives documentation from the supplier and federal organization and completes the review within 120 working days.
5
OPO submits the review of the complaint report, including findings, to the supplier, the Minister of the federal organization and the Minister of Public Services and Procurement.

Table 1: Review of complaint regulatory criteria

Required criteria to make a complaint regarding the **"award"** of a contract include:	Required criteria to make a complaint regarding the **"administration"** of a contract include[1]:
• Complainant is a Canadian supplier. • Complaint is filed in writing, within prescribed timeframes. • Contract has been awarded. • Contract value is less than $25,300 for goods or less than $101,100 for services. • Federal organization falls under the jurisdiction of the Ombudsman. • Canada Free Trade Agreement is applicable, except for dollar thresholds. • Facts and grounds of the complaint are not and have not been the subject of an inquiry before the Canadian International Trade Tribunal or the courts. • Reasonable grounds exist to believe the contract was not awarded in accordance with the regulations made under the *Financial Administration Act*.	• Complainant is a Canadian supplier. • Complaint is filed in writing, within prescribed timeframes. • Complainant must have been awarded the contract in question. • Complaint cannot be about the application and interpretation of the terms and conditions or about the scope of the work of the contract[2].

Note 1:
There are no dollar thresholds associated with complaintsrelated to the administration of a contract.

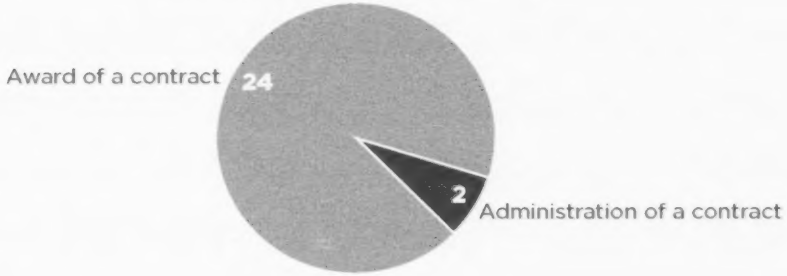
Note 2:
Complaints about the application and interpretation of the terms and conditions or scope of work of the contract can be addressed through OPO ADR services.

For a complete list of criteria, please consult the *Procurement Ombudsman Regulations* at www.opo-boa.gc.ca.

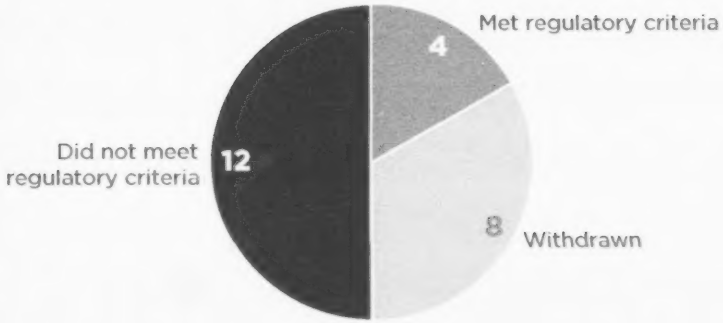
Reviews of supplier complaints

Between April 1, 2017, and March 31, 2018, the Office of the Procurement Ombudsman received 26 written complaints.

2017—2018 Written complaints



Award of a contract



Administration of a contract

INVESTIGATE AT A GLANCE

4
Reviews of complaints launched

8
Reviews of complaints completed

2 received in 2017–2018

6 carried over from 2016–2017

2
Procurement practice reviews launched*

3
Follow-up procurement practice reviews completed

26
Issues raised in completed reviews of complaints

10
Federal organizations included in completed OPO reviews

- Correctional Service of Canada
- Employment and Social Development Canada
- Global Affairs Canada
- Health Canada
- Indigenous and Northern Affairs Canada
- Natural Resources Canada
- Natural Sciences and Engineering Research Council
- Public Health Agency of Canada
- Public Services and Procurement Canada
- Royal Canadian Mounted Police

In reviews of complaints, the Ombudsman has found in favour of:

* to be completed in 2018–2019 per legislated timelines

Federal organization did not follow its internal evaluation instructions

(Launched in 2016—2017 and completed in 2017—2018)

A supplier filed a complaint regarding the award of a contract for services by a federal organization. The contract at issue was awarded following a solicitation under a supply arrangement. The Complainant alleged: 1) its proposed resource was improperly deemed unqualified for not meeting a mandatory experience criterion; and 2) the Organization granted an extension to the bid closing date, and changed certain criteria, to allow a resource from another supplier to qualify.

Regarding the first issue, OPO found the Organization did not follow its internal evaluation instructions by failing to provide detailed written comments to explain how the Complainant's proposal did not meet a mandatory criterion. The reasons provided for deeming the proposal non-compliant included some that were not germane to the criteria established by the Organization in the solicitation. The Organization also failed to explain why the proposed resource's experience in the area of legal/litigation, cited as a reason for non-compliance, was not considered sufficiently similar to the listed criteria. OPO was therefore unable to determine the basis upon which the proposal was deemed non-compliant in accordance with the criteria listed in the solicitation.

On the second issue, the review revealed that the extension granted to the bid closing date was applied equally to all invited suppliers. In addition, OPO found no evidence to suggest that a clarification to a mandatory criterion benefitted any supplier, as the requestor was ultimately deemed non-compliant, and the winning bidder had already submitted its proposal when the request was granted. Lastly, OPO found that although the winning bidder did gain additional points as a result of a change to a rated criterion, it had no effect on the outcome of the procurement as the same supplier would have received the contract had this change not been made. For these reasons, OPO was unable to substantiate the allegation of favouritism.

Ombudsman recommends compensation to a bidder as a federal organization did not comply with procurement requirements

(Launched in 2016–2017 and completed in 2017–2018)

A supplier filed two complaints regarding two federal contracts awarded for the provision of investigative services issued through a call-up made against a National Master Standing Offer (NMSO). The Complainant raised the following issues in both complaints: 1) the Department did not provide sufficient details of the work activities to be performed, the deliverable(s) and the associated timelines; 2) the Department did not disclose its evaluation methodology in the solicitation; 3) the Department did not provide the Complainant with a reasonable timeframe within which to respond to the solicitation; 4) the Complainant believed that the solicitation issued by the Department meant that the Complainant would be issued the contract, but was not; and 5) the Complainant was not advised in a timely manner that it was not awarded the contract, and was not provided the reasons why.

In relation to the first issue, both reviews found that the Department did not provide the Complainant with sufficient details of the work to be performed, as required by the NMSO. However, the Complainant should have asked for clarification or raised concerns to the Department upon becoming aware of this, and prior to submitting proposals.

On the second issue, both reviews found that the Department solicited and compared multiple proposals, thereby creating a competitive process. In doing so, the Department was required to, but did not, disclose evaluation criteria for the solicitation.

On the third issue, both reviews found no evidence to support the Complainant's allegation that it was rushed by the Department to submit its proposals.

On the fourth issue, both reviews found no merit to the allegation, as a standing offer does not guarantee business unless a bidder is notified by the Department that its proposal is accepted.

On the fifth and final issue, one review found the Department did not advise the Complainant it was not awarded the contract in a timely manner. The other review found that the Complainant was advised in a timely manner. In both cases, the Department did not follow internal guidance to provide unsuccessful bidders with additional information, such as the name of the successful supplier, the estimated amount of the contract, and the reasons why bids were not selected.

As a result of these findings, the Interim Procurement Ombudsman recommended the Department pay compensation to the Complainant for each respective complaint.

Federal organization conducted an undisclosed competitive procurement process

(Launched in 2016–2017 and completed in 2017–2018)

A supplier filed a complaint regarding the award of a contract issued through a call-up made against a standing offer (SO) for the provision of investigative services. The complaint alleged the Department: 1) did not provide sufficient details of the work, activities and timelines in the solicitation; 2) did not disclose its evaluation methodology in the solicitation; 3) did not provide a reasonable timeframe to respond to the solicitation; 4) caused the Complainant to reserve resources to perform the work and lose days of consulting work (i.e. the solicitation issued by the Department meant that the Complainant would be issued the contract); and 5) did not advise the Complainant in a timely manner that it was not awarded the contract, and the reasons why.

Regarding the first issue, the review revealed the SO's Statement of Work contained a list of tasks, deliverables and timelines. OPO found the Department did provide the Complainant with sufficient details in the solicitation. To the extent that the Complainant had concerns regarding the solicitation, it should have sought clarification or raised those concerns to the Department prior to submitting its proposal.

On the second issue, OPO found that the Department solicited and compared multiple proposals, thereby creating a competitive process. In doing so, the Department was required to, but did not, disclose its evaluation criteria and selection methodology in the solicitation.

On the third issue, the review revealed that the SO required proposals to be submitted within three business days, and the Department provided the Complainant with eight business days to respond. OPO found no evidence to support the allegation that the Complainant was rushed by the Department to submit a proposal.

On the fourth issue, the review revealed that the SO established a sequential approach for contacting qualified suppliers. This required the Department to notify one supplier that its proposal was not accepted before proceeding to contact the next supplier in line. As the Department failed to notify the Complainant that its proposal was not selected, OPO found it was reasonable for the Complainant to assume it would be issued the contract.

On the fifth and final issue, OPO found the Complainant was not advised in a timely manner that it was not awarded the contract. The notification should also have included the name of the successful supplier, the estimated value of the contract, and an overview of the reasons why the Complainant's proposal was not selected.

The Interim Procurement Ombudsman recommended the Department pay compensation to the Complainant.

Assessment criteria inconsistent with stated basis of selection

(Launched in 2016–2017 and completed in 2017–2018)

A supplier filed one complaint regarding the award of two contracts for services issued under a supply arrangement. The Complainant alleged the Department: 1) deviated from the applicable departmental policies, directives, standards and procedures; 2) did not award the contract in accordance with the basis of selection identified in the solicitation; and 3) did not properly disclose to the Complainant sufficient information regarding the successful bidder.

Regarding the first issue, although the Department did adhere to some of the required guidance, it issued a solicitation that did not disclose the maximum budget in accordance with the stated basis of selection.

Regarding the second issue, the contract was awarded in accordance with the solicitation's assessment criteria, which recommended the bid with the highest overall point rating for "technical merit and price". However, the basis of selection stated in the solicitation was "Highest Rated Within Budget", which seeks to award contracts based on technical merit rather than price. Therefore, the solicitation contained assessment criteria and a basis of selection that were not aligned, which made the solicitation open to interpretation.

Regarding the third issue, the Department disclosed information regarding the successful supplier in a manner consistent with the *Privacy Act*.

Therefore, the Interim Procurement Ombudsman recommended the Department pay compensation to the Complainant.

Unclear solicitation request causes headaches for suppliers

(Launched and completed in 2017–2018)

A supplier filed a complaint against a federal organization regarding the award of a contract for services issued under a supply arrangement. The Complainant raised two issues: 1) the solicitation was unclear on whether suppliers were to include travel and living expenses in their proposed all-inclusive firm lot price; and 2) the Organization should have sought clarification from the Complainant regarding its financial proposal.

Regarding the first issue, the solicitation lacked clarity regarding whether suppliers were to include travel and living expenses in their all-inclusive firm prices.

Regarding the second issue, jurisprudence has established that federal organizations are not obligated to seek clarification regarding proposals.

The Organization had the option, but not the obligation, to seek clarification from the Complainant regarding information provided in the proposal. In this instance, the Organization stated the proposal was clear and exercised its prerogative to not seek clarification from the Complainant.

The proposal was evaluated in accordance with a mandatory criterion

(Launched and completed in 2017–2018)

A supplier submitted a written complaint regarding a contract awarded by a federal organization for innovative concepts to enhance and improve the user experience on a Government of Canada website. The Complainant claimed its proposal was not evaluated in accordance with a mandatory criterion.

OPO found the Organization's assessment of the Complainant's proposal was both reasonable and supported by sufficient written evidence. Therefore, the complaint could not be substantiated, and there was no basis upon which to recommend compensation to the Complainant.

Nonetheless, the issue raised by the Complainant highlighted the importance of defining terms used in a solicitation. In this case, the Organization's use of multiple terms to mean the same thing could have created confusion for bidders, and this would have been avoided had the Department used a single term or provided definitions of key terms in the solicitation.

Compensation follow-up

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In OPO's 2016–2017 Annual Report, it was reported that negotiations were still ongoing between a supplier and a federal organization regarding an instance where the Procurement Ombudsman recommended compensation. After following up, OPO confirmed that the federal organization did pay compensation to the supplier as per the Ombudsman's recommendation.

Highlighting the most common procurement-related issues

In order to identify recurring issues that affect fairness, openness and transparency in federal procurement, OPO analyzes questions and concerns raised by Canadian suppliers through contacts and written complaints. This information is used by OPO to identify the most common issues raised, which are considered in determining what topics to examine through procurement practice reviews.

In 2017—2018, the five most common issues raised by suppliers through direct contacts to OPO were:

1 Solicitation (67)

Concerns in this category related to the solicitation phase of the procurement process, including issues such as:
- **the application of rules:** rules regarding the use and application of procurement tools (26)
- **questions:** late responses or unanswered supplier questions (18)
- **timing:** time provided to respond to proposals (13)
- **solicitation notice:** whether suppliers are being made aware of contract opportunities (10)

2 Evaluation of bid (61)

Concerns regarding how bids were evaluated, including issues such as:
- **bid evaluation:** suppliers being evaluated unfairly or inconsistently (35)
- **the selection of successful bidders:** allegations the successful bidder did not meet requirements set out in the solicitation (26)

3 Evaluation and selection plan (58)

Concerns related to the method used by federal organizations to select the winning bids. More specifically, suppliers raised concerns regarding:
- **criteria:** mandatory criteria set out in the solicitation, including restrictive or unfair evaluation criteria (40)
- **evaluation plan:** the evaluation grid used to evaluate each supplier bid (11)
- **selection method:** the method by which the winning supplier is selected (7)

4 Debriefing (43)

Concerns related to communications between the federal organizations and suppliers post-contract award. More specifically, suppliers raised concerns regarding:
- **communication:** issues contacting federal officials (25)
- **debriefing:** suppliers receiving no debriefing or an insufficient debriefing regarding a contract where they were not the successful bidder (18)

5 Planning and strategy (43)

Concerns regarding the preparation leading in to the procurement process, including issues such as:
- **project planning:** planning of project requirements and timelines (17)
- **strategy determination:** selection of the appropriate procurement approach to be used (26)

Reviewing federal procurement practices

The Regulations also provide the Procurement Ombudsman with the authority to review the procurement practices of federal organizations. These in-depth and objective reviews provide the Procurement Ombudsman with the opportunity to explore the procurement practices of one or more federal organizations and make recommendations to strengthen the fairness, openness and transparency of those practices.

To determine what topics to review, OPO examines multiple sources, including:

- issues raised by the supplier and the federal procurement community;
- issues identified by professional and industry associations; and
- issues identified in federal organization internal and external audits.

The analysis of these issues takes into consideration:

- the reviews identified in the previous three-year plan that have not yet been carried out;
- the frequency of issues raised and linkage with OPO's previously conducted reviews; and
- the nature of the issues (underlying cause and highest risk areas, based on professional judgment).

In 2017—2018, OPO launched two procurement practice reviews that will be completed and reported on in 2018—2019, in accordance with the timeframes set out in the *Procurement Ombudsman Regulations*. These reviews are entitled *Review of Bid Solicitation Processes* and *Review of the Procurement Management Control Framework of a Federal Organization*.

Procurement practice review flow chart

1. OPO selects a topic and federal organization(s) based on an analysis of risk to fairness, openness and transparency in federal procurement.
2. OPO meets with the organization(s) to launch the review.
3. OPO gathers and analyzes information (e.g. reviews contract files) to respond to the review objective(s).
4. OPO presents preliminary findings to the organization(s).
5. OPO drafts a report, including any applicable recommendations, and provides the organization(s) with an opportunity to review it and provide management responses.
6. Final report published, including management response and action plan.
7. Follow-up review conducted after two years to see the progress made by the organization(s) on OPO recommendations.

Procurement practice review reports, including follow-up reports, are published in their entirety on OPO's website.

Follow-up reviews

OPO conducts follow-up reviews two years after the initial release of a procurement practice review in order to determine OPO's impact on federal procurement practices. In these reports, OPO reviews the recommendations made by the Procurement Ombudsman in the initial report and assesses the level of progress made by the federal organization. Follow-up reviews allow OPO to report on this progress and inform interested stakeholders of the actions organizations have taken to improve procurement practices. By making these reports available in their entirety on OPO's website, other federal organizations can introduce similar improvements, if applicable.

According to the three follow-up reviews published in 2017—2018, all federal organizations who received recommendations took appropriate action to improve their procurement practices, demonstrating OPO's usefulness in promoting fairness, openness and transparency in federal procurement. OPO assessed the information provided by the organizations for overall reasonableness and credibility.

The following are summaries of follow-up procurement practice reviews completed by OPO in 2017—2018.

Follow-up report on the 2014—2015 Review of Government-wide Procurement Practices Regarding Standing Offers and Supply Arrangements

In 2014—2015, OPO conducted a procurement practice review entitled *Review of Government-wide Procurement Practices Regarding Standing Offers and Supply Arrangements*. The scope of this review included Health Canada, the Public Health Agency of Canada, Global Affairs Canada, Correctional Service Canada and Public Services and Procurement Canada. The Procurement Ombudsman's recommendations were directed at three of these organizations: Health Canada, Public Health Agency of Canada and Global Affairs Canada.

The follow-up revealed that all three organizations took action in response to the recommendations made in the original review. This included creating documentation standards for supply arrangement and standing offer procurement files and implementing risk-based monitoring of supply arrangements and standing offers. When asked for documentation to substantiate these assertions, the organizations provided OPO with supporting documentation for each action.

Follow-up report on the 2014—2015 Review of the Procurement Management Framework of Natural Resources Canada

In 2014—2015, OPO conducted a procurement practice review entitled *Review of the Procurement Management Framework of Natural Resources Canada*. The follow-up revealed that the Department took seven actions in response to the two recommendations made by the Procurement Ombudsman. This included three actions to enhance its monitoring and oversight regime and four actions to ensure the consistent application of controls.

Follow-up report on the 2014—2015 Employment and Social Development Canada, and Information Technology Services

In 2014—2015, OPO conducted a procurement practice review entitled *Employment and Social Development Canada, Information Technology Services*. The follow-up revealed that the Department took action in response to the two recommendations made in the original review. This included updating policies and guidelines regarding contract amendments, task authorizations and file documentation. This also included creating a risk-based monitoring framework for procurement and conducting monitoring activities, including monitoring contract amendments. When asked for documentation to substantiate these assertions, the Department provided OPO with supporting documentation for each action.

Appendix

Statement of Operations for the period starting on April 1, 2017, and ending on March 31, 2018 (fiscal year 2017—2018).

Statement of Operations

Expenses	2017—2018 ($000)
Salaries and employee benefits	2,978
Professional services	219
Operating expenses	80
Information and communication	159
Materials and supplies	11
Corporate services provided by PWGSC[1]	367
TOTAL	**3,814**

The following notes are an integral part of the Statement of Operations.

Office of the Procurement Ombudsman

Notes to the Statement of Operations for the year ended March 31, 2018.

1. Authority and objective

The position of Procurement Ombudsman was established through amendments to the *Department of Public Works and Government Services Act*. The Procurement Ombudsman's mandate is further defined in the *Procurement Ombudsman Regulations*. The Office of the Procurement Ombudsman's mission is to promote fairness, openness and transparency in federal procurement.

2. Parliamentary authority

The funding approved by the Treasury Board for the operation of the Office of the Procurement Ombudsman is part of Public Works and Government Services Canada's (PWGSC) appropriation, and consequently, the Office of the Procurement Ombudsman is subject to the legislative, regulatory and policy frameworks that govern PWGSC. Nonetheless, implicit in the nature and purpose of the Office of the Procurement Ombudsman is the need for it to fulfill its mandate in an independent fashion by maintaining an arm's-length relationship with PWGSC.

3. Related party transactions

Corporate services provided by PWGSC	2017—2018 ($000)
Finance	82
Human resources	54
Information technology	219
Other	12
TOTAL	**367**

[1] The Department of Public Works and Government Services (DPWGS), or Public Works and Government Services Canada (PWGSC), is now referred to as Public Services and Procurement Canada (PSPC).